

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:) Confirmation No: 9260
Paul S. Enfield)
Application No. 09/902,923) Examiner: Elaine L. Gort
Filed: July 10, 2001) Group Art Unit: 3687
For: INFORMATION, DIRECTORY,)
LOCATION AND ORIENTATION)
SYSTEM FOR RETAIL STORES AND)
THE LIKE)

THIRD DECLARATION OF PAUL ENFIELD UNDER 37 C.F.R. § 1.132

1. I, Paul Enfield, having a home address of 3320 Oregon Place, Bellingham, WA 98226, state the following. I am the applicant in the above-identified patent application.
2. I have been involved in the grocery business for 45 years, working with both national and regional chains. For the decade of the 1980's I had the opportunity to lead a food store that we built up to the highest sales volume store in the state of Washington. As the only store in our company of this format, we orchestrated all merchandising, marketing and pricing at the store level. In subsequent years I directed operations of a group of stores; managed labor and operations expenses; and facility design, construction and operations for a 36 store regional grocery chain. This broad grocery background layered on my architectural education made me uniquely positioned to discover the extremely beneficial elements of this invention. From my experience I have a deep understanding of the economics of the grocery business, profit margins,

and all financial aspects of operating a grocery store, or a chain of grocery stores.

Accordingly, I believe I am fully capable of accurately making the following statements.

3. Based on my years of experience in the grocery business, I have arrived at the following general explanation of the economics of a grocery store.

- i. The average grocer nets profit of 1% to 2% of sales
- ii. It takes the gross profit on the first 80% of the sales to cover the fixed expenses.
- iii. It is on the remaining 20% of sales that the profit is made;
- iv. A store that makes a profit 5% on the last 20% of sales, nets an overall profit of 1% of sales.

4. The most common way of drawing customers into the store is to have a sale on certain products where the product(s) on sale is/are sold at a reduced cost. The hope is that the customer will come into the store to purchase those particular products that are on sale and also buy other products in the store since the customer is already in the store.

5. When the concept of the claimed signage system was well defined, we conducted some consumer response studies and found that the system was well received by customers who found shopping easier with the aid of these directories. However, to point out a benefit to grocers and product providers, we thought it would be beneficial to conduct a test to track the impact on actual sales. The following half year trial was laid out.

6. The products that are on sale are often sold at a loss, and if there is any increase in net profits it is from the increase of sales from the other products within the store. In many instances the store manager feels that on balance he would have been better off

without the "on sale" products because increases in sales of the other products do not offset losses of the "on sale" products.

7. In the final three months trial period of operation of the East Wenatchee store, with the display signs provided in a store facility in accordance with the independent claims of the present application, the increase in sales of these displayed product lines and other brand names associated therewith, was a clear 45%. Moreover, an important aspect of this which to be emphasized is that the price of the products displayed on the signs remained the same as the current shelf price. Therefore, this total 45% amount has the full profit margins without any additional "on sale" losses. This was truly extraordinary, and had a great benefit on both total sales and profit margin. These results were not only "completely unexpected," but I could state it more strongly as being very pleasantly surprising.

8. In response to the Examiner's statements, starting on line 6 of page 14 of the final Office Action dated October 9, 2009, regarding prior declarations by me and David Weber failing to show clear evidence of unexpected results, and that , I submit the following:

9. When I first started this venture, I engaged the cooperation of some people in an organization to undergo a case study by actually implementing the system in a grocery store in a fashion so that we could make comparisons. The test store was selected for a number of reasons. The market was very stable with very little in or out migration during the period of the test. Furthermore, with its agricultural base, the late fall and winter for the period to test the new signs was selected because of the minimal

influence of seasonal work. There were no outside factors that would have been expected to have any significant effect on the subject of this test. My associates and I were optimistic that the present patent application would prove to be beneficial, mainly because it would make grocery shopping easier for the customer, but when the test results were tabulated, we saw another result which I might call a significant "bonus," which was completely unexpected for all of us, and added another segment of the market that also benefitted from applying the system.

10. In a nutshell, it was found that not only did this make shopping more efficient and pleasant for the customer, but there was an unexpectedly large increase in sales which was well beyond what any of us had expected.

11. We conducted an extensive study, tracking the sales of all "dry grocery" (non-refrigerated) products in the entire 35 stores of the chain for an entire half year.¹ We tracked total sales for the 13 weeks prior to the installation of the new signs and then compared this with sales of the same products for the 13 weeks following the installation of the signs. In addition to tracking all dry grocery sales, we focused on sales of the portion of the products shown on the signs and that carried the same brand name as products shown and were merchandised in the same aisle as the signs. The sales in the 34 stores without the signage system were used as a baseline on which to measure the effects of the claimed invention.

¹ The term "dry grocery" is an industry term used to describe the largest category of grocery sales, and includes all non-refrigerated products except for beer, wine and general merchandise, such as non-edible seasonal products and health and beauty aids.

12. To explain this further, the store where the signs were installed for the six-month case study is in East Wenatchee in the state of Washington, with this case study store being only one store among 35 stores which are operated by the same owner. All of these 35 stores used common pricing, and advertising and product mixed as they are placed on the shelves. Therefore, these other 34 stores (along with the East Wenatchee store) provide a proper baseline for measuring the statistical data that was taken. Also, no changes occurred in the test market location that could be considered "other variables," such as those listed by the Examiner, which would have significantly affected the resulting data. For instance, population count and demographic mix was stable, as was the local economy.

13. The aisle directory signs shown in the photographs in the patent application are the actual signs used during the study. The aisle directory signage in the 34 other baseline stores was equivalent to the industry standard, showing only text product descriptions, which is believed to be the closest prior art with respect to the claimed subject matter.

14. Also, it should be noted that these comparisons were being made by tracking the same products using the same methodology in all of these 35 stores. It was anticipated that featuring the brand named products on the signs could have a direct sales effect on the products shown on the display sign, but could also have some indirect effect on the sales of other adjacent products carrying the same logo. So we studied not only the approximately 100 dry grocery items shown on the signs, but also the others carrying the same logo. For example, if the sign featured a Betty Crocker yellow cake mix, sales

of Betty Crocker fudge cake mix would also be tracked as an associated product, and furthermore sales of Betty Crocker frosting mixes would also be tracked as associated

15. Figure 16 of the application, reproduced below, depicts the summation of these tabulations of sales

**Products Shown on Directories
As a Percent of Dry Grocery Sales**

Date Range	Illustrated Product Sales Vs. All Category Sales	
	Other 34 Stores	Trial Store
3 Months Before Installation		
12-Jul-00 - 10-Oct-00	17.8%	16.9%
3 Months After Installation		
11-Oct-00 - 09-Jan-01	19.5%	24.5%
Change (Increase)	9.4%	45.1%

Figure 16

Figure 16 shows the percentage of total dry grocery sales that are made up of products and associated products of the same brands as shown on the signs. The left column of percentages shows the represented percentages in the other 34 baseline stores. This illustrates that in the baseline stores with no changes in directory signs, the percentage of sales change of products associated with the signs changed from 17.8% of total dry

grocery sales to 19.5%, or an increase on 9.4% (i.e., $(19.5\% - 17.8\%) \div 17.8\% = 9.4\%$, before rounding) between the two three-month periods. The right column shows the sales in the store where the signs were tested. In the three months before the signs were installed products later associated with the signs accounted for 16.9% of dry grocery. However, in the three months after the signs were installed, the percentage of products associated with the signs jumped to 24.5%, or a totally unexpected and almost unbelievable increase of 45.1% (i.e., $(24.5\% - 16.9\%) \div 16.9\% = 45.1\%$, before rounding).

16. The same trade name products in generally the same arrangement of locations were present in the trial store as in the other 34 stores. In the trial store during the three months before the trial began, the percentage of products later associated with the signs differed only slightly from the average percentage of those products' sales in the other 34 stores. Now shifting to look at the last three months of the trial, when the claimed signs were used in the trial store, the sales of associated products jumped from 16.9% to 24.5%. The magnitude of the sales increase is shown by subtracting 16.9% from 24.5% and dividing by 16.9% (i.e., $(24.5\% - 16.9\%) \div 16.9\% = 45.1\%$), which is about 45.1%.

17. As stated in the earlier part of the text dealing with this subject, this result to me (as well as to the others engaged in this venture) was that the magnitude of this increase was entirely unexpected, and extremely significant. It could have been expected that there would be some increase sales in the products which are shown on the signs, but nothing of this magnitude. In an industry where fixed costs are high, margins are very

slim and profits generally only are 1% to 2% of sales, an increase in sales of over one-third for products representing over one-sixth of the entire dry grocery department is huge. Since these dry grocery categories generally contribute over a third of total store sales, and since these are incremental extra sales without any extra fixed overhead or marketing costs, this shift in sales could easily contribute over a 10% increase in net profit. The result was substantially improved profits for both the retailer and the product manufacturer or supplier. This magnitude of sales increase for this large grouping of products was not only extraordinary, but completely unexpected.

18. These results benefit: the manufacturer of the displayed products because there is increased sales of their products; the store itself because it has an increase of 45% in the sales of the products, and all of this 45% added in sales is in the last 20% from which the store derives its profits; and the customer because he or she is better able to move through the store to shop in a convenient and efficient manner, and much more likely to be prompted to buy everything the customer needs, rather than only what the customer is specifically looking for.

19. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: April 7, 2009

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